REMARKS

Claims 1-15 and 20-25 are pending in the application.

Claims 1-15 and 20-25 have been rejected.

Reconsideration of the Claims and withdrawal of the rejections is respectfully requested.

I. 37 CFR 1.131 DECLARATION AND PETITION DECISION DATED MARCH 18, 2006

The Office Action states that the declaration filed October 24, 2005 under 37 CFR 1.131 is ineffective because Applicant's petition under 37 CFR 1.47 has been dismissed by the USPTO Petitions branch. On February 6, 2006, Applicant filed a Request For Reconsideration of the dismissal of the petition. On March 16, 2006, the USPTO Petitions branch granted Applicant's Request for Reconsideration. Attached is a copy of the communication from the USPTO granting Applicant's petition. As a result, Applicant's declaration under 37 CFR 1.131 is proper and is effective to overcome the Hiscock reference.

II. REJECTION UNDER 35 U.S.C. § 102

Claims 1-3, 11, 13, 21 and 23 were rejected under 35 U.S.C. § 102(e) as being anticipated by Hiscock (US 6,721,787). The rejection is respectfully traversed.

Hiscock was issued on April 13, 2004, and has an effective filing date of February 10, 2000. The present application was filed on February 1, 2001, with an effective priority date of June 16,

2000 (by virtue of U.S. provisional application 60/212,203). Thus, Hiscock qualifies as prior art only under 35 U.S.C. § 102(e).

Pursuant to the USPTO's granting of Applicant's petition, the previously filed Declaration of Prior Invention Under 37 C.F.R. 1.131 is now proper.

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(e) rejection of Claims 1-3, 11, 13, 21 and 23 over Hiscock.

III. REJECTIONS UNDER 35 U.S.C. § 103

Claims 4-5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiscock (US 6,721,787) in view of Haartsen (US 6,590,928). Claims 6-7 and 14-15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiscock (US 6,721,787) in view of Treyz (US 6,678,215). Claims 8, 22 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiscock (US 6,721,787) in view of Jones (US 6,108,314). Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiscock (US 6,721,787) in view of Callaway, Jr. (US 6,711,380). Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiscock (US 6,721,787) in view of McClard ("Unleashed: Web Tablet Integration Into the Home"). Claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiscock (US 6,721,787) in view of Nevo (US 6,600,726). Claim 20 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiscock (US 6,721,787) in view of Thompson (US 6,484,011). Claim 25 was

rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiscock (US 6,721,787) in view of Gershman (US 6,356,905). The rejections are respectfully traversed.

All of the above § 103(a) rejections are based upon Hiscock as the primary reference. As set forth above, Hiscock is unavailable as prior art due to Applicants' prior invention.

Accordingly, the Applicants respectfully request withdrawal of the § 103 rejections of Claims 4-10, 12, 14-15, 20, 22, 24 and 25.

IV. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Davis Munck Deposit Account No. 50-0208.

Respectfully submitted,

DAVIS MUNCK, P.C.

Date: 3/20/2006

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OFFICE OF PETITIONS

In re Application of :
Fillebrown et al. :
Application No. 09/773,885 :
Filed: February 1, 2001 : ON PETITION
Title of Invention: :
PERSONAL WIRELESS NETWORK :

This is a decision in response to the Request for Reconsideration, filed February 13, 2006, requesting the Declaration of Prior Invention Under 37 C.F.R. § 1.131 be made by the signing inventors on behalf of themselves and the nonsigning inventor. The petition is properly treated as a petition under 37 CFR 1.183 seeking waiver of 37 CFR 1.131 to the extent that it requires all of the named inventors execute the declaration filed thereunder[1].

This Petition is hereby **granted**.

Petitioner's assert that the claimed invention, the subject matter of which is described and claimed in the above identified application, was conceived prior to the effective date of the reference, and was diligently reduced to practice by all of the application's named inventors. Petitioner's further assert that, after diligent effort, inventor Lisa Fillebrown, is unavailable.

In support of this assertion, Petitioner's file the Declaration of Robert D. McCutcheon which establishes that non-signing inventor, Lisa Fillebrown, refuses to sign the declaration.

[1] Rule 47 only applies where, in the first instance, the signature of an originally named, or to be added, inventor can not be obtained. As all of the inventors executed the original declaration, filed February 1, 2001, and thus made the application, 37 CFR 1.47 no longer applies to this case. See, 37 CFR 1.47; MPEP 201.03. Rather, the remedy lies under 37 CFR 1.183 when a required affidavit or declaration of a prior invention to overcome a cited patent or publication, under 37 CFR 1.131, is not executed in whole or in part by a previously signing inventor. See, MPEP 715.04.

As noted in MPEP 715.04, an adequate showing may lead to acceptance of a declaration under 37 CFR 1.131 executed by less than all the named inventors of the claimed subject matter in question. Under the facts presented, it is agreed that justice requires waiver of the rules to the extent they require Lisa A. Fillebrown, Russell D. Kautz and Kenneth M. Glover tp declare. However, the favorable decision herein does not relieve applicants from their burden to establish that the invention was completed before the date of the references and that the claimed invention was the product of joint inventors. See, In re Carlson, 79 F.2d 900, 27 USPQ 400 (CCPA 1935).

The application is being referred to Technology Center 2155.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

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Office of Petitions